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FM AMEMBASSY SARAJEVO

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S E C R E T SECTION 01 OF 04 SARAJEVO 001253

SIPDIS

EUR/SCE (FOOKS, JUKIC), S/WCI (RAPP, VIBUL-JOLLES), INR (MORIN), INL (SIMIC, CARROLL), EUR/ACE (KEETON); OSD FOR BEIN

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TAGS: [PREL](#) [PGOV](#) [KAWC](#) [KCRM](#) [KJUS](#) [BK](#)

SUBJECT: WAR CRIMES AMBASSADOR RAPP'S OCTOBER 13-15 VISIT TO BOSNIA

REF: ZAGREB 602

Classified By: Ambassador Charles L. English for reasons 1.4 (b) and (d)

¶1. (C) Summary: S/WCI Ambassador Stephen Rapp traveled to Sarajevo October 13-15 to discuss extension of the mandate of international judges and prosecutors past December, implementation of the National War Crimes Strategy, and Bosnia's efforts to pursue regional cooperation agreements. Most of Ambassador Rapp's interlocutors expressed deep concern over the fate of the State Court and the State Prosecutor's Office in light of the impending legislatively-mandated December 14 departure of international judges and prosecutors. End Summary.

Ambassador Rapp Delivers a Message of Hope

¶2. (C) Ambassador Rapp expressed to all interlocutors continuing U.S. commitment to the rule of law and judicial institutions in Bosnia. He also expressed strong USG support for extending the mandate of international judges past December and pledged that he would do all in his power to help seek a suitable outcome. This includes looking at all options, such as allowing international judges to continue working on cases that are in trial past December so that their cases would not have to be restarted and witnesses would not have to testify again and relive the horrors of the 1992-1995 war. Ambassador Rapp also stressed that the USG considers as a priority Bosnia's efforts to reach regional cooperation agreements (as called for in the National War Crimes Strategy).

State Court President Kreso: State Court is Under Attack

¶3. (C) State Court President Meddzida Kreso stressed that political actors in BiH are working to dismantle the State Court, and warned that if the mandate of internationals is not extended and resources continue to be cut, the court will simply "fade away." Kreso said that she is extremely concerned about the future of the court, noting that if internationals leave, not only will four cases in trial need to be retried, but the court's capacity will be significantly reduced during a year in which it has already experienced large budget cuts. Additionally, public perception of the court would diminish. She asked Ambassador Rapp to lobby for the court with the international community, highlighting the need for the court to be integrated into the state-level constitution and for it to have its own budget. When Ambassador Rapp inquired as to what options for assisting the court after the departure of internationals, Kreso remained

firm that options absent an extension are limited and would not benefit the court; for example, judicial advisors could not participate in court deliberations.

Barasin: HighRep Inzko Should Use His Bonn Powers

¶4. (C) State Prosecutor Milorad Barasin began the meeting by highlighting the progress on regional cooperation. He said that the cooperation agreement between Serbia, Croatia and Montenegro is not an acceptable model for Bosnia, but that Bosnian and Serbian Ministries of Justice are working on a bilateral agreement and "are 50 percent there." Barasin reported that the agreement would regulate joint investigative teams and include a memorandum of understanding pertaining to organized crime cases. Barasin also noted that while an agreement between Bosnia and Croatia does not currently exist, he has had very good cooperation with Zagreb, and he is regularly in touch with Croatia Prosecutor Bajic.

¶5. (C) Regarding an extension of the mandate of the internationals' presence, Barasin told Ambassador Rapp that he has been lobbying for an extension for over a year and noted that the U.S. was the only country that offered "honest support" for an extension. Barasin admitted that it has not always been easy to work with internationals, but that an extension of their mandate is in the best interest of Bosnia. He added that he supports the use of the Bonn Powers to facilitate an extension in both the war crimes and organized crime departments. Unlike Kreso, Barasin said that he supported keeping legal assistants on board even if there is

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no extension, but would prefer having prosecutors (and judges) who are operational. He said that without internationals, new national judges and prosecutors would need to be hired, and it would take them months, if not years, just to read case material. Barasin also warned that politicians are trying to take control of the judiciary, and if that happens, he would leave the judiciary, along with many other good prosecutors. Ambassador Rapp thanked Barasin for his efforts and told him that the current political situation is above and beyond what any prosecutor should encounter.

¶6. (C) Meeting separately, David Schwendiman, the head of the State Prosecutor's Special Department for War Crimes, briefed Ambassador Rapp on the progress being made to implement the National War Crimes Strategy. He stated that prosecutors are continuing to use victim-based case selection criteria to focus on the most egregious war crimes cases. Moreover, his staff is continuing to digitalize files containing information about war crimes from prosecutors' offices nation-wide. He estimated that the project could be completed in a year. At the same time, Schwendiman stressed that the local judicial authorities are overestimating the significance of the number of files in prosecutors' offices nation-wide. He explained that it must still be determined whether these files contain enough information to warrant investigations and prosecutions and that the information contained in them must be deconflicted. Finally, Schwendiman stressed the need for the internationals to continue working in Bosnia, saying that national prosecutors would probably resist taking on the most complex war crimes cases absent an international presence.

Novkovic: BiH Needs to Speed Up Processing of Cases

¶7. (C) High Judicial and Prosecutorial Council (HJPC) President Milorad Novkovic, who is also the head of the Supervisory Board tasked with monitoring the implementation of the National War Crimes Strategy, expressed concern about the lengthy processing of war crimes cases. He said he has asked war crimes prosecutors at the state and entity level to

draft a report on what has been done to prosecute outstanding war crimes cases. He insisted that the number of cases is considerably less than the 14,000 to 16,000 cases that others cite. Novkovic also told Ambassador Rapp that he supports extending internationals in both the war crimes and the organized crimes chambers, noting though that, in his opinion, an international presence is more important in war crimes given the large backlog of war crimes cases. Novkovic stated that in the event that there is no extension, all international judicial personnel could become advisors, not only at the state level but also at the entity level.

Ambassador Rapp responded by stressing the importance of an extension, and agreed that it was important to begin thinking of alternatives.

Justice Minister Colak Looking for Options

¶ 8. (C) Justice Minister Barisa Colak told Ambassador Rapp that the law his ministry had submitted to extend the presence of the internationals did not pass in the House of Peoples, but said there might be a way to amend the law, resubmit it, and win legislative support. Colak went on to say that if there is not a way to extend internationals through legislative means, he had discussed the possibility of giving internationals a transition period before they move into a monitoring and advisory role. Under these circumstances, Colak said the government would seek to fill the internationals' positions as soon as possible with nationals. Rapp reiterated his concerns not just about extending the internationals, but also the loss of internationals on the war crimes cases that would need to be retried if judges left in the middle of the trials. Minister Colak also informed Ambassador Rapp that his ministry has launched a series of initiatives aimed at advancing regional cooperation, one which deals with international legal aid and the other which concerns criminal sanctions. Colak added that his office is looking at the EU convention on the transfer of criminal proceedings to determine what powers this provides for transferring cases.

OHR Frustrated with Inaction

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¶ 9. (S) High Representative Valentin Inzko briefed Ambassador Rapp on the status of international judges and prosecutors, saying that he believes the failure of the legislative extension of secondees is "not about foreigners, but that politicians don't want a judiciary at all." Inzko went on to say that he is worried the U.S. is "abandoning the Mladic case." Principal Deputy Representative Raffi Gregorian explained that all U.S. military elements working on war crimes issues have left Bosnia, and consequently the U.S. has "apparently abandoned" efforts here to capture Mladic. Ambassador Rapp stressed that the U.S. continues to assist in the capture of Mladic, and any perception that we have abandoned that agenda is simply untrue. He added that this type of cooperation was shown to be important since Radovan Karadzic's whereabouts were established because of work done in Bosnia.

Other International Representatives Weigh In

¶ 10. (C) At an October 14 lunch hosted by DCM Jonathan Moore, the ambassadors of Great Britain, the Netherlands, and Norway, along with representatives from the Swedish Embassy, the Organization for Security and Cooperation in Europe (OSCE), the International Tribunal for the former Yugoslavia (ICTY), and the International Committee for Missing Persons (ICMP) were unanimously downbeat about the state of affairs with the Bosnian judiciary. They stated their concern about the departure of the internationals, the significantly reduced budgets for the State Court and the State

Prosecutor's Office, and the inability of both institutions to defend themselves against rhetorical attacks, especially from Republika Srpska. The British Ambassador noted that his government has provided technical assistance to help the State Court and the State Prosecutor's Office craft public relations strategies to counter these attacks and to increase public confidence. He noted, however, that this assistance had been met with resistance by some staff members. All of the representatives agreed that the international community could not afford to permit its long-standing investment in the state-level judiciary to fail.

View From the NGOs

¶11. (C) The Mothers of Srebrenica, one of the most active victims group, began the meeting with Ambassador Rapp by thanking the U.S. government for assistance in opening a memorial center in Potocari to victims of the 1995 Srebrenica genocide. In addition, they argued that the presiding judge at the ICTY trial of Radovan Karadzic should be removed, because of the poor job he had done as the judge in the trial of Slobodan Milosevic. They also urged Ambassador Rapp, during his upcoming visit to Belgrade, to raise the case of Bosnian Croat Ilija Jurisic, who is being tried for war crimes in Serbia. They argued that Jurisic is innocent, and said that international experts should monitor his trial. Ambassador Rapp told the Mothers he would follow up on their requests. He said he would raise concerns about the Jurisic case with Serb officials and would pursue ways that trials in Serbia could be monitored. He also assured the Mothers that representatives of the U.S. Embassy in the Hague would monitor the Karadzic trial.

¶12. (C) Ambassador Rapp also met with the Director of the Research and Documentation Center, Mirsad Tokaca. Tokaca and Rapp agreed that it was vitally important for reconciliation efforts to collect and publicize accurate information on the war crimes that occurred in Bosnia.

COMMENT

¶13. (C) Ambassador Rapp's visit to Bosnia, coming so soon after assuming office, provided judicial interlocutors with a much-needed message of support at a time when the state-level judiciary is experiencing tremendous challenges. It also gave us another opportunity to hear just how fragile the progress that has been made remains and the real possibility that the State Court and the State Prosecutor's Office could fail. With this in mind, it is imperative that the international community takes a definitive stand on extending the mandate of the internationals given that all of the internationals' contracts terminate on December 14.

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¶14. (U) Ambassador Rapp has cleared on this message.
ENGLISH